

10/629,415



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | | |
|--------------|---|-----------------|--------------|
| Applicant: | Todd R. Burkey | Examiner: | Yaima Campos |
| Serial No.: | 10/629,415 | Group Art Unit: | 2185 |
| Filing Date: | July 29, 2003 | Docket No.: | 3916 |
| Title | Method, Apparatus and Program Storage Device for Dynamically Resizing Mirrored Virtual Disks in a Raid Storage System | | |

Date of Deposit: 7/1/08

I hereby certify that this paper is being facsimile transmitted to the USPTO or deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Signature: Mary S. KellerPrinted Name: Mary S. Keller

OFFICE COMMUNICATION

Commissioner for Patents
Alexandria, VA 22313

We received a Notice of Non-Compliant Amendment mailed on March 26, 2008 (copy enclosed). We responded to this Notice on April 22, 2008. We have now received another Notice of Non-Compliant Amendment mailed on June 9, 2008, which appears to be the same request, noting claim 1, which was corrected in our April 22, 2008 response. I spoke with Examiner Campos about this discrepancy in a phone call on June 26, 2008. She said she would take the necessary actions to resolve the problem. Copies of all related documents are enclosed herewith.

Respectfully submitted,
XIOTECH CORPORATION
By its attorneys:

Date: 7/1/2008

James C. Evans
Registration No. 56,730
Beck & Tysver, P.L.L.C.
2900 Thomas Ave., #100
Minneapolis, MN 55416
Telephone: (612) 915-7006
Fax: (612) 915-9637



UNITED STATES PATENT AND TRADEMARK OFFICE

Transferred to Xiotech 8/22/07

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

And same to Xiotech 6/12/08

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/629,415 | 07/29/2003 | Todd R. Burkey | 062781-0082 | 5964 |
| 41552 | 7590 | 06/09/2008 | | |
| MCDERMOTT, WILL & EMERY 4370 LA JOLLA VILLAGE DRIVE, SUITE 700 SAN DIEGO, CA 92122 | | | | |
| EXAMINER CAMPOS, YAIMA | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2185 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 06/09/2008 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

7/9/08 OX

RECEIVED
JUN 12 2008

MCDERMOTT, WILL & EMERY

✓mk

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/629,415

Examiner

YAIMA CAMPOS

Applicant(s)

BURKEY, TODD R.

Art Unit

2185

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 13 December 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 4(e) Other: At least claim 1 has been currently amended wherein amendments made have not been properly marked/underlined as the text "reporting respective... source virtual disk" in lines (11-15) has been added to claim 1 and has not been properly underlined as required.

The response to this Notice of Non-Responsive Amendment must identify all changes made to the Claims filed on 6/14/07. Applicant is required to correct any other deficiencies found and properly mark the text of any added subject matter by underlining the added text.

/Yaima Campos/
Examiner, Art Unit 2185

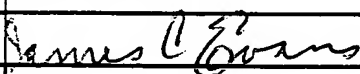
/H K/
Hong Kim AU2185

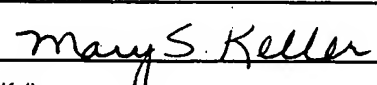
/Sanjiv Shah/
Supervisory Patent Examiner, Art Unit 2185

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

| | | |
|---|------------------------|----------------|
| TRANSMITTAL FORM (to be used for all correspondence after initial filing) | Application Number | 10/629,415 |
| | Filing Date | 07/29/2003 |
| | First Named Inventor | Todd R. Burkey |
| | Art Unit | 2185 |
| | Examiner Name | Daniel Y. Kim |
| Total Number of Pages in This Submission | Attorney Docket Number | 3916 |

| ENCLOSURES (Check all that apply) | | |
|--|--|--|
| <input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Copy of Notice of Non-Compliant Amendment; Corrected Amendment; and Return Postcard |
| Remarks | | |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | | | |
|--|---|----------|--------|
| Firm Name | BECK & TYSSER, P.L.L.C. | | |
| Signature |  | | |
| Printed name | James C. Evans | | |
| Date | 4/22/2008 | Reg. No. | 56,730 |

| CERTIFICATE OF TRANSMISSION/MAILING | | | |
|---|---|------|---------|
| I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below: | | | |
| Signature |  | | |
| Typed or printed name | Mary S. Keller | Date | 4-22-08 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/629,415

07/29/2003

Todd R. Burkey

062781-0082

5964

41552 7590 03/26/2008

MCDERMOTT, WILL & EMERY
4370 LA JOLLA VILLAGE DRIVE, SUITE 200
SAN DIEGO, CA 92122

RECEIVED
MAR 31 2008

MCDERMOTT, WILL & EMERY

3916

EXAMINER

CAMPOS, YAIMA

ART UNIT PAPER NUMBER

2185

MAIL DATE DELIVERY MODE

03/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

URGENT

transferred to Dr. Tysver 8/22/07
fwd same to " 4/4/08

✓mk

4/26/07 OX

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/629,415

Examiner

YAIMA CAMPOS

Applicant(s)

BURKEY, TODD R.

Art Unit

2185

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 13 December 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 4(e) Other: At least claim 1 has been currently amended wherein amendments made have not been properly marked/underlined as the text "reporting respective... source virtual disk" in lines (11-15) has been added to claim 1 and has not been properly underlined as required.

The response to this Notice of Non-Responsive Amendment must identify all changes made to the Claims filed on 6/14/07. Applicant is required to correct any other deficiencies found and properly mark the text of any added subject matter by underlining the added text.

/Yaima Campos/
Examiner, Art Unit 2185

/H K/
Hong Kim AU2185